

numbered §800.403 under the proposed regulations). The words “has been accepted” in the first sentence of that section replace “is received” to underscore that the 30-day review period does not begin until the Chair has determined that the voluntary notice complies with the requirements of §800.402. Further technical changes were made to subsection (a) to reflect changes made in §800.401 concerning agency notice.

Section 800.501. Subsection (b) has been added to this section to make explicit a practice the Committee has been following since it began receiving notices under section 721, *i.e.*, inviting the parties to certain notified transactions to meet with the Committee. The Staff Chairman, at his discretion, may invite the parties to a meeting to clarify certain issues with respect to the filing; such a meeting may occur either during the 30-day review period or during the investigation. When the parties involved in investigations request a meeting with the Committee, the request is ordinarily granted.

Section 800.601. A number of commenters expressed concern that the finality of Committee or Presidential action under section 721 is called into question if there is a right to reopen consideration of a case on the basis of material omissions or material misstatements. This section has been expanded in an attempt to allay some of those concerns. Subsection (f) has been added to clarify the matters the Committee considers “material”: These are confined to information requested by §800.402 of the regulations; information requested by the Committee during the course of an initial review, an investigation, or the Presidential determination period; or information provided by the party(ies) *sua sponte*. However, the Committee will generally not find information to be “material” if it concerns purely commercial matters having no bearing on national security, such as the price of stock.

DRAFTING INFORMATION

The principal author of this document is the Office of the Assistant General Counsel (International Affairs). However, personnel from other offices at the Treasury Department and from other agencies that are members of the Committee participated extensively in its development.

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APPENDIX B TO PART 800—PREAMBLE TO REGULATIONS ON MERGERS, ACQUISITIONS, AND TAKEOVERS BY FOREIGN PERSONS (PUBLISHED MAY 25, 1994)

NOTE: For the convenience of the reader, this appendix contains the text of the preamble to the final rules amending the regulations on mergers, acquisitions, and take-

overs by foreign persons beginning at the heading “Discussion of the Final Rule” and ending before “List of Subjects in 31 CFR Part 800” (59 FR 27178, May 25, 1994).

DISCUSSION OF THE FINAL RULE

Section 837(a) of the Defense Authorization Act creates for the first time a mandatory investigation provision under Exon-Florio. There are three points worth noting about this provision. First, this provision is limited in application to certain types of acquisitions. Specifically, the acquirer in question must be a foreign government controlled entity, or an entity acting on behalf of a foreign government. Furthermore, the acquisition must be one which “could result in control of a person engaged in interstate commerce in the United States that could affect the national security of the United States” (emphasis added). Thus, even where the other specified criteria are met, this provision does not mandate an investigation for cases that could not “affect the national security of the United States.”

Second, for purposes of determining whether the acquisition results in foreign government control, CFIUS is applying the same functional test for control as provided in §800.204.

Third, in contrast to the criterion for Presidential action under Exon-Florio, *i.e.*, that the foreign party acquiring control might take action that “threatens to impair the national security,” the criterion for undertaking an investigation of transactions involving government controlled entities is that there could be an effect on the national security.

The term “foreign government” has been broadly defined for purposes of these regulations to include any government or body exercising governmental functions, and includes but is not limited to national as well as various regional and local levels of government. It is important to note that the definition is not limited to the particular levels of government that are specified in the regulation, and that other governmental bodies, including supra-national entities such as the European Union (including its component parts), are covered by this regulation.

For purposes of the mandatory investigation provision, the regulations define the term “engage in” as used in the phrase “seeks to engage in any merger, acquisition or takeover * * *” to mean “seeks to acquire control through.” The purpose of this regulation is to clarify that the mandatory investigation provision would not be triggered in cases where a foreign government controlled entity’s participation in an acquisition is

Pt. 800, App. B

solely for the purpose of investment, as defined in §800.217 of the regulations. The Committee believes that this reading is supported by the legislative history, and particularly floor statements made by members of Congress who sponsored this particular amendment. *See, e.g.*, Cong. Rec., Sept. 18, 1992, pages S 14050 through 14053 (comments of Senators Exon, Sarbanes and Riegle); and Cong. Rec. Oct. 3, 1992, page H 10986 (comments of Representative Collins). Subparagraph 800.402(c)(5)(iii) has been changed in the final regulations by the addition of the words “for example” to clarify that an agency or representative role are examples of

31 CFR Ch. VIII (7–1–08 Edition)

ways in which a foreign person can act on behalf of a foreign government, but are not the only ways in which such a relationship could be conducted.

DRAFTING INFORMATION

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[59 FR 27180, May 25, 1994]